

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 14, 2002

To: The Commission
(Meeting of June 27, 2002)

From: Bill Julian
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2062 (Pescetti)** – Energy: agency consolidation

As Amended April 24, 2002

Recommendation: Oppose

Summary: This bill proposes to:

1. Create a new Department of Energy that would have the following characteristics:
 - a. Administration by a Secretary for Energy;
 - b. Succession to all duties, powers, purposes, responsibilities and jurisdiction of the Energy Commission, the Power Authority, the Division of Oil and Gas in the Department of Conservation, the Department of Water Resources (with respect to its responsibilities under ABX1 1).
 - c. Succession to the duties, powers, purposes, responsibilities and jurisdiction of the California Public Utilities Commission (Commission) relating to facilities for the furnishing of heat, light and power, subject to “changes in existing law.”
 - d. Transfer of all officers and employees in the state civil service of the above agencies.
 - e. Possession and control of all property held for the benefit or the use of the above agencies.
2. Create a new Energy Reliability Board (ERB) consisting of five members including the Secretary for Energy, a chairperson appointed by the Governor, a ratepayer representative

and a utility representative. The proposed ERB would, subject to legislation to be proposed, would exercise “all ratemaking powers for electrical, transmission and distribution, and natural gas transportation, consisted with former powers of the PUC.”

3. Repeal most of the Public Utilities Act applicable to all utilities, specifically Chapters 2.3, 4, 5, 7, 8, 9, 10 and 11.
4. Repeal the Warren-Alquist Act.
5. Repeal the legislation creating the Power Authority.
6. Repeal the Division of the Public Resources Code that applies to oil and gas, including all forms of oil, gas and geothermal production regulation.

Analysis: This bill provides for a new energy agency to replace all existing energy-related agencies currently operating in California. With respect to the Commission specifically, the bill states the Legislature’s intent to provide for succession by the agency and the ERB to the Commission’s energy-related regulatory authority. This may reflect a recognition of the constitutional basis for the Commission’s activity, in an attempt to avoid a clearly unconstitutional redirection of regulatory authority from the Commission to another entity, without a preceding constitutional amendment.

However, the bill also repeals most of the operative provisions of the Public Utilities Act that are the basis for regulation of telecommunications, transportation and water utilities, as well as energy utilities. The bill thus would leave consumers of all essential services identified by the constitution without substantive protection of any sort, since the repeal accompanied by a mere statement of intent to enact certain legislation in the future with respect to gas and electric utilities would not offer protection to consumers against any form of abusive behavior by a provider of essential service, whether it would be price gouging, discrimination, denial of service, inadequate service or environmental degradation.

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CPUC- OGA (916) 327-1407

Date: June 19, 2002

BJ:mpg
Attachment

BILL LANGUAGE:

BILL NUMBER: AB 2062 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 20, 2002
AMENDED IN ASSEMBLY APRIL 24, 2002

INTRODUCED BY Assembly Members Pescetti and Reyes
(Coauthors: Assembly Members Ashburn, Bates, Bill Campbell, Cox,
and Strickland)

FEBRUARY 19, 2002

An act to enact the Energy Code, to repeal Division 3 (commencing with Section 3000) of, and to repeal Division 15 (commencing with Section 25000) of, the Public Resources Code, to repeal Chapter 2.3 (commencing with Section 330) of Part 1 of Division 1 of, to repeal Chapter 4 (commencing with Section 701) of Part 1 of Division 1 of, to repeal Chapter 5 (commencing with Section 1001) of Part 1 of Division 1 of, to repeal Chapter 7 (commencing with Section 1351) of Part 1 of Division 1 of, to repeal Chapter 8 (commencing with Section 1401) of Part 1 of Division 1 of, to repeal Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of, to repeal Chapter 10 (commencing with Section 1901) of Part 1 of Division 1 of, to repeal Chapter 11 (commencing with Section 2100) of Part 1 of Division 1 of, and to repeal Division 1.5 (commencing with Section 3300) of, the Public Utilities Code, and to repeal Division 27 (commencing with Section 80000) of the Water Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2062, as amended, Pescetti. Energy: agency consolidation.
~~Existing law establishes the Division of Oil, Gas, and
Geothermal Resources within the Department of Conservation. The~~

The Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission) and requires it to certify sufficient sites and related facilities that are required to provide a supply of electric power sufficient to accommodate projected demand for power statewide. Under that act, the Energy Commission also administers existing law with respect to energy

conservation.

Existing law authorizes the Public Utilities Commission to regulate public utilities, including electrical and gas corporations.

Under existing law, the commission is charged with issuing certificates of public convenience and necessity to every electrical and gas corporation proposing to construct or modify any electric or gas plant within the state, is authorized to determine the value of the property of every public utility in the state, to fix the just compensation to be paid by a political subdivision for public utility property acquired by eminent domain, to hold hearings concerning complaints against certain entities, including electrical and gas corporations, and to charge and collect certain fees. Under existing law, a public utility is guilty of a crime for failing to comply with provisions of the Public Utilities Act, the California Constitution, or an order by the commission.

Under existing law, the California Consumer Power and Conservation Financing Authority Act establishes the California Consumer Power and Conservation Financing Authority (Power Authority), with certain powers and ~~responsibility~~ *responsibilities*, including the issuance of up to \$5,000,000,000 of revenue bonds, for the purposes of augmenting electric generating facilities and ensuring a sufficient and reliable supply of electricity.

Existing law authorizes the Department of Water Resources to enter into contracts for the purchase and sale of electric power in accordance with specified requirements.

This bill would enact the Energy Code. The bill would delete the above described provisions of existing law and would establish the Department of Energy under the administration of the Secretary for Energy, who would be appointed by the Governor and subject to confirmation by the Senate. The bill would state the intent of the Legislature to propose changes in existing law to transfer to the department all the duties, powers, purposes, responsibilities, and jurisdiction of the Public Utilities Commission relating to the ownership, operation, control, and management of a line, plant, or system for the production, generation, transmission, and furnishing of heat, light, and power directly or indirectly to or for the public. The bill would transfer to the department all the duties, powers, purposes, responsibilities, and jurisdiction of the Power Authority, the Energy Commission, ~~the Division of Oil, Gas, and Geothermal Resources~~, and the Department of Water Resources relating to the purchase and sale of electric power. The bill would require all the officers and employees of the Power Authority, the Energy Commission, ~~the Division of Oil, Gas, and Geothermal Resources~~, and the Department of Water Resources who, on the operative date of this bill are exercising any

duty, power, purpose, responsibility, or jurisdiction to which the department succeeds to, to be employed by the department.

The bill would establish an Energy Reliability Board consisting of a chairperson, appointed by the Governor and confirmed by the Senate, the Secretary of the department, a representative of public utilities, appointed by the Governor and confirmed by the Senate, and an energy ratepayer, appointed by the Governor and confirmed by the Senate. The bill would declare the intent of the Legislature to propose changes to existing law to vest the board with all ratemaking powers for electrical transmission and distribution, and natural gas transportation, consistent with former powers of the Public Utilities Commission with respect to the regulation of the electrical and natural gas industries.

The existing restructuring of the electrical services industry establishes the Electricity Oversight Board (Oversight Board) to oversee the Independent System Operator and the Power Exchange in order to ensure the success of the electrical industry restructuring and to ensure a reliable supply of electricity in the transition to a new market structure.

This bill would delete these provisions.

The bill would declare the intent of the Legislature to codify the provisions that would be repealed by the bill in the Energy Code under the governance of the department, the Independent System Operator, and the Energy Reliability Board.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Energy Code is enacted, to read:

ENERGY CODE

DIVISION 1. PRELIMINARY PROVISIONS

Article 1. General Provisions

1. This code is known as the Energy Code.
2. Division, chapter, article, and section headings do not affect the scope, meaning, or intent of this code.
3. Unless the provision or context otherwise requires, the general provisions and rules of construction in this division govern the construction of this code.
4. If a reference is made to a portion of this code or to another law, the reference applies to all amendments and additions

regardless of the time made.

5. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Part" means a part of the division in which that term occurs.

(c) "Chapter" means a chapter of the division or part, as the case may be, in which that term occurs.

(d) "Article" means an article of the chapter in which that term occurs.

(e) "Section" means a section of this code.

(f) "Subdivision" means a subdivision of the section in which that term occurs.

(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.

(h) "Subparagraph" means a subparagraph of the paragraph in which that term occurs.

6. The present tense includes the past and future tenses, and the future, the present.

7. The singular number includes the plural, and the plural, the singular.

8. "Shall" is mandatory and "may" is permissive. "Shall not" and "may not" are prohibitory.

9. If a provision or clause of this code or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the code that can be given effect without the invalid provision or application, and to this end, the provisions of this code are severable.

10. (a) Any reference in any code to the California Consumer Power and Conservation Financing Authority, the State Energy Resources Conservation and Development Commission, or the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation, shall be deemed to refer to the Department of Energy.

(b) Any reference in any code to the Department of Water Resources relating to the purchase or sale of electric power pursuant to Division 27 (commencing with Section 80000) of the Water Code, shall be deemed to refer to the Department of Energy.

Article 2. Definitions

11. As used in this code, unless otherwise indicated, the following terms have the following meanings:

(a) "Department" means the Department of Energy.

DIVISION 2. DEPARTMENT OF ENERGY

50. The Department of Energy is hereby established.

51. (a) The department is administered by the Secretary for Energy.

(b) The secretary is appointed by the Governor and subject to confirmation by the Senate.

52. (a) It is the intent of the Legislature to propose changes in existing law so that the department succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction of the Public Utilities Commission relating to the ownership, operation, control, and management of a line, plant, or system for the production, generation, transmission, and furnishing of heat, light, and power directly or indirectly to or for the public.

(b) (1) Notwithstanding any other provision of law, except as specified in paragraph (2), the department succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction of the California Consumer Power and Conservation Financing Authority.

(2) Notwithstanding Section 3380.1 of the Public Utilities Code, the department may issue bonds only for the purposes of energy conservation in an amount not to exceed one billion dollars (\$1,000,000,000), exclusive of any refunds.

(c) Notwithstanding any other provision of law, the department succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction of the State Energy Resources Conservation and Development Commission.

(d) Notwithstanding any other provision of law, the department succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction of the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation.

(e) Notwithstanding any other provision of law, the department succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction of the Department of Water Resources relating to the purchase and sale of electric power pursuant to Division 27 (commencing with Section 80000) of the Water Code.

53. All officers and employees of the Public Utilities Commission, the California Consumer Power and Conservation Financing Authority, the State Energy Resources Conservation and Development Commission, the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation, and the Department of Water Resources who, on the operative date of this section, are serving in the state civil service, other than as temporary employees, and are exercising any duty, power, purpose, responsibility, or jurisdiction to which the department succeeds pursuant to Section 52, are transferred to the department. The status, positions, and rights of those persons

existing prior to the transfer shall not be affected by the transfer and shall be retained by those persons as officers and employees of the agency, pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to positions exempted from civil service.

54. The department shall have possession and control of all records, papers, offices, equipment, supplies, moneys, funds, appropriations, licenses, permits, agreements, contracts, claims, judgments, and land or other property, real or personal, connected with the administration of, or held for the benefit or use of, the Public Utilities Commission, the California Consumer Power and Conservation Financing Authority, the State Energy Resources Conservation and Development Commission, the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation, and the Department of Water Resources for the performance of the functions transferred to the department by Section 52.

DIVISION 3. ENERGY RELIABILITY BOARD

75. The Energy Reliability Board is hereby established.

76. It is the intent of the Legislature to propose changes in existing law to vest the Energy Reliability Board with all ratemaking powers for electrical transmission and distribution, and natural gas transportation, consistent with former powers of the Public Utilities Commission with respect to the regulation of the electrical and natural gas industries.

77. The Energy Reliability Board shall consist of five members as follows:

(a) A chairperson, appointed by and serving at the pleasure of, the Governor, subject to confirmation by the Senate.

(b) The ~~Secretary~~ *secretary* of the department.

(c) *The chairperson of the Independent System Operator.*

(d) A representative of public utilities, who shall be appointed by the Governor, confirmed by the Senate, for an initial two-year term, and four-year terms thereafter.

~~—(d)—~~

(e) An energy ratepayer, who shall be appointed by the Governor, confirmed by the Senate, for an initial three-year term, and four-year terms thereafter.

~~SEC. 2. Division 3 (commencing with Section 3000) of the Public Resources Code is repealed.~~

~~SEC. 3.—~~

SEC. 2. Division 15 (commencing with Section 25000) of the

Public Resources Code is repealed.

~~SEC. 4.~~

SEC. 3. Chapter 2.3 (commencing with Section 330) of Part 1 of Division 1 of the Public Utilities Code is repealed.

~~SEC. 5.~~

SEC. 4. Chapter 4 (commencing with Section 701) of Part 1 of Division 1 of the Public Utilities Code is repealed.

~~SEC. 6.~~

SEC. 5. Chapter 5 (commencing with Section 1001) of Part 1 of Division 1 of the Public Utilities Code is repealed.

~~SEC. 7.~~

SEC. 6. Chapter 7 (commencing with Section 1351) of Part 1 of Division 1 of the Public Utilities Code is repealed.

~~SEC. 8.~~

SEC. 7. Chapter 8 (commencing with Section 1401) of Part 1 of Division 1 of the Public Utilities Code is repealed.

~~SEC. 9.~~

SEC. 8. Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code is repealed.

~~SEC. 10.~~

SEC. 9. Chapter 10 (commencing with Section 1901) of Part 1 of Division 1 of the Public Utilities Code is repealed.

~~SEC. 11.~~

SEC. 10. Chapter 11 (commencing with Section 2100) of Part 1 of Division 1 of the Public Utilities Code is repealed.

~~SEC. 12.~~

SEC. 11. Division 1.5 (commencing with Section 3300) of the Public Utilities Code is repealed.

~~SEC. 13.~~

SEC. 12. Division 27 (commencing with Section 80000) of the Water Code is repealed.

SEC. 13. *It is the intent of the Legislature in subsequent legislation to codify the repealed provisions set forth in Sections 2 to 12, inclusive, of this act in the Energy Code under the governance of the Department of Energy, the Independent System Operator, and the Energy Reliability Board. It is further the intent of the Legislature to abolish the Electricity Oversight Board.*